**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR**

**TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929**

**WP(C).No. 26057 of 2006(B)**
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**PETITIONER:**
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**K.H. MOHAMMAD ALI,**
**PROP: ELLICKAL ENTERPRISES, KALAMACHERRY,KOCHIN-33.**

**BY ADV. SRI.C.J.XAVIER.**

**RESPONDENTS:**
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1. **THE INTELLIGENCE OFFICER-III,**
   **COMMERCIAL TAXES, ERNAKULAM.**

2. **THE DEPUTY COMMISSIONER,**
   **COMMERCIAL TAXES, ERNAKULAM.**

3. **THE COMMISSIONER OF COMMERCIAL TAXES,**
   **TRIVANDRUM.**

4. **THE DEPUTY TAHSILDAR (R.R),**
   **KANAYANNUR TALUK, ERNAKULAM.**

**BY GOVERNMENT PLEADER SRI. MOHAMMED RAFIQ.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/06/2007, ALONG WITH W.P.(C). NO. 15063/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**W.P.(C). NO.26057/2006:**

**APPENDIX**

**PETITIONER'S EXHIBITS:**

**EXT.P.1: COPY OF THE PENALTY PROCEEDINGS AND ORDER DTD. 18/09/03 ISSUED BY THE R.1. FOR THE YEAR 1998-99.**

**EXT.P.2: COPY OF THE PENALTY PROCEEDINGS AND ORDER DTD. 11/09/03 ISSUED BY THE R.1. FOR THE YEAR 99-2000.**

**EXT.P.3: COPY OF THE PENALTY PROCEEDINGS AND ORDER DTD. 18/09/03 ISSUED BY THE R.1. FOR THE YEAR 2000-01.**

**EXT.P.4: COPY OF THE ORDER DTD. 30/12/05 ISSUED BY THE R.2. CONFIRMING THE ORDER OF THE R.1.**

**EXT.P.5: COPY OF THE ORDER DTD. 26/07/06 ISSUED BY THE R.3. DISMISSING THE 2ND REVISION PETITION.**

**EXT.P.6: COPY OF THE PROCEEDINGS BY THE GENERAL MANAGER, DISTRICT INDUSTRIES CENTRE, SANCTIONING TAX EXEMPTION TO THE PETITIONER.**

**EXT.P.7 (I) TO (V): COPY OF THE R.R. NOTICES ISSUED BY THE R.4.**

**EXT.P.8: COPY OF THE JUDGMENT DTD. 08/01/04 IN W.P.(C). 666/04 OF THIS HONOURABLE COURT.**

**EXT.P.9: COPY OF THE JUDGEMENT DTD. 09/02/04 IN W.A. 262/04 OF THIS HONOURABLE COURT.**

**EXT.P.10: COPY OF THE NOTICE OF THE R.4. NOTIFYING AUCTION OF THE PROPERTY.**

**EXT.P.11: COPY OF THE OBJECTION FILED BY THE PETITIONER BEFORE THE R.4.**

**RESPONDENT'S EXHIBITS: NIL.**

**//TRUE COPY//**

**prv.**

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.26057 of 2006

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Dated this the 26th day of June, 2007.

JUDGMENT

The petitioner is challenging Ext.P5 order whereunder the Commissioner of Commercial Taxes has confirmed in second revision penalty levied under Section 45A of the KGST Act for the the assessment years 1998-99, 1999-2000 and 2000-2001. Petitioner's case is that petitioner is an industrial unit entitled to exemption from payment of tax in respect of products manufactured by it. The petitioner has produced Ext.P6 certificate of exemption granting sales tax exemption from 29.9.1998 to 28.9.2005 by order dated 2.7.2004. The product in respect of which exemption is granted is barbed wire. According to the petitioner, later petitioner got exemption for GI wire also. However, sub-clause (x) of Clause 10 of notification SRO 1729/93 under which exemption was granted, provide for debarring a unit from availing exemption if the industrial unit is found to be engaged in purchase or sales suppression. When an inspection was carried out in the business premises of the petitioner on 30.8.2000, it was found that petitioner was not maintaining any books of accounts. The inspection team searched and collected lot of materials which prove

unaccounted purchase and sale of goods. In fact, besides the other documents recovered pertaining to purchase and transport of goods, Bank documents obtained prove beyond doubt that petitioner purchased materials for Rs.12,96,860/- for 1998-99, for Rs.32,69,574/- for 1999-2000 and for the year 2000-2001 the purchase of materials made through Bank was for Rs.36,94,721.50. The Intelligence Officer before levying penalty called for books of accounts on ten occasions starting from 18.9.2000 to 17.7.2002. However, petitioner did not produce any books of accounts. Therefore, returns filed before the Assessing Officer were called for and verified. It was seen that the petitioner has declared a sales turnover of Rs.1,32,120/- for 1998-99 and Rs.1,80,596/- for 1999-2000. So far as the year 2000-2001 is concerned, petitioner did not file any return. Since evasion of tax was proved beyond doubt through documentary evidence collected, penalty was imposed under Section 45A of the KGST Act. After levy of penalty, petitioner filed returns for two years i.e. for 1998-99 declaring a turnover of Rs.10,61,653/- and for 1999-2000 declaring a turnover of Rs.29,88,594.80. However, for the year 2000-2001 the petitioner did not file any return even though unaccounted purchase of raw material worth Rs.36,94,721.50 was established in penalty proceedings.

2. The penalty orders are considered in two levels of revision. I find

from the impugned orders that all the three authorities concurrently found based on documentary evidence that petitioner was involved in unaccounted purchase, production and sales suppression. Even an industrial unit entitled to sales tax exemption is also bound to maintain books of accounts as provided under Rule 21 and 32 of the KGST Rules and exemption has to be claimed subject to limits based on books of accounts. In fact, the exemption certificate itself was issued to the petitioner on 2.7.2004 and obviously the same was done by another department without noticing the massive evasion and unaccounted transactions of the petitioner. In other words, if penalty proceedings were known to the District Industries Centre, I do not think they would have issued exemption certificate to the petitioner because clause 10(x) of SRO 1729/93 under which certificate of exemption is issued, specifically bars industrial unit engaged in purchase or sales suppression from getting tax exemption. In any case since petitioner has obtained certificate, this court should not order it's withdrawal. So far as petitioner's challenge against penalty is concerned, the contention of counsel that the accountant committed suicide merits no consideration because penalty proceedings are initiated after granting ten opportunities in the course of two years' time to the petitioner to produce books of accounts. Therefore, petitioner does not deserve any more opportunity to produce

books of accounts, more so because petitioner did not file any return and even the revised returns after levy of penalty are incorrect. In the circumstances, levy of penalty in principle is upheld for all the three years. However, since petitioner was granted sales tax exemption, though belatedly, I reduce the penalty to 50% i.e. equal to tax amount provided the entire penalty is paid in two instalments, first of which will be paid on or before 31.7.2007 and the balance on or before 31.8.2007. Since this court has granted stay at various stages and recovery was not so far pursued, I reduce the interest also to 50% i.e. at the rate of 12% per annum as against 24% p.a. provided payment is made as above. However, if payment is not made as above, then the reduction of penalty and waiver of 50% interest will stand vacated and respondents will be free to proceed for recovery of entire arrears.

W.P. is disposed of as above.

C.N.RAMACHANDRAN NAIR
Judge

pms